



February 12, 2001

Mr. J. Michael Criswell
County Attorney
Swisher County
Courthouse
Tulia, Texas 79088

OR2001-0528

Dear Mr. Criswell:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 144102.

The Swisher County Attorney (the "county") and the county Juvenile Probation Department (the "department") each received a request for information pertaining to a named juvenile for the period from January 1 through December 1999. You have submitted for our review representative samples of information that is responsive to the requests.¹ You assert that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with chapter 58 of the Family Code. We have considered the exception you claim and reviewed the submitted information.

At the outset, we note that the information pertaining to the named juvenile that is held by the department is not subject to the Act. Section 552.003(1)(B) of the Government Code excludes the judiciary from the Act. In Open Records Decision No. 646 (1996), this office determined that specific records regarding individuals on probation and subject to the direct supervision of a court that are held by a community supervision and corrections department

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

fall within the Act's judiciary exclusion because such records are held on behalf of the judiciary. Accordingly, the Act does not require release of any of the responsive information held by the department. We next address the claimed exception for the information held by the county.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 58.007 of the Family Code, regarding juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, provides in relevant part as follows:

(b) Except as provided by Article 15.27, Code of Criminal Procedure, the records and files of a juvenile court, a clerk of court, a juvenile probation department, or a prosecuting attorney relating to a child who is a party to a proceeding under this title are open to inspection only by:

- (1) the judge, probation officers, and professional staff or consultants of the juvenile court;
- (2) a juvenile justice agency as that term is defined by Section 58.101;
- (3) an attorney for a party to the proceeding;
- (4) a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or
- (5) with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or the work of the court.

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

The information at issue involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, we find that the requested information is confidential pursuant to section 58.007 of the Family Code. You also appear to inquire whether the requestors, the named juvenile and a parent of the juvenile, have a special right of access to the information under section 552.023 of the Government Code. The relevant language of section 552.023 states:

(a) A person or person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and is protected from public disclosure by laws intended to protect that person's privacy interests.

We do not believe that section 58.007 of the Family Code is intended solely to protect the privacy interests of the subject juvenile. Moreover, the information at issue is governed by section 58.007 of the Family Code, and none of the access provisions of section 58.007 provide for release of the information in this instance. Accordingly, you must withhold the information from disclosure under section 552.101 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one

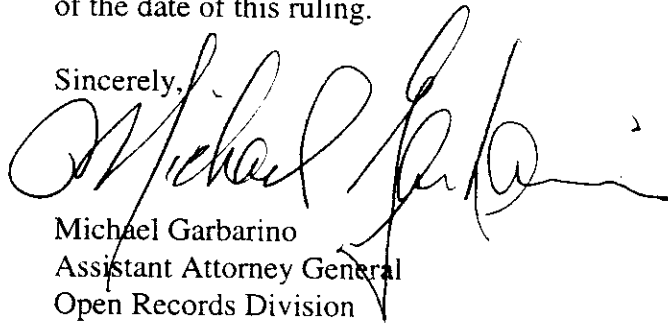
of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Garbarino", is written over the typed name and title.

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/seg

Ref: ID# 144102

Encl. Submitted documents

cc: Ms. Lynda Lofton
Ranch Road 2 Box 18b
Tulia, Texas 79088
(w/o enclosures)